

SAN BERNARDINO COUNTY
DEPT. OF AGRICULTURE/WEIGHTS & MEASURES
Fiscal Year 2007/2008 ENFORCEMENT WORK PLAN

PESTICIDE USE ENFORCEMENT STAFF

- Deputy – Jim Mitchell, 60-70% Pesticide Use Enforcement (PUE); manages several other programs.
- Supervisor – George Dearmin, primarily PUE responsibilities; less than 5-10% of his time is spent in other programs.
- Four full-time PUE specialists, other duties on a limited basis – provide coverage and backup in other programs as needed. One of these full-time PUE specialists is fluent in Spanish and is stationed in the Ontario office.
- The Deputy, the Supervisor and the remaining three full-time specialists work from the main office in San Bernardino. One of these main office specialists is bilingual (Spanish), giving the department one bilingual officer in Ontario and one in San Bernardino. This specialist obtained her PUE license in June 2006 and is now working on her own after receiving training and working with experienced staff.
- Two licensed district officers (Barstow and Victorville); many other program responsibilities, PUE responsibilities accounting for about 10% of each of their time.
- One full-time office assistant, program responsibility is primarily PUE.
- Another full-time office assistant, whose duties are divided among several different programs in addition to PUE.

The three specialists stationed in the San Bernardino office have headquarters, application monitoring, and investigative responsibilities based on geographical divisions. The two newer specialists have also assumed some of the Pesticide Use Report (PUR) input duties and are assisted by the experienced specialist when working on PUR and informational queries. Because the specialists have different work schedules (days off vary), there is opportunity for them to work occasionally in other PUE districts for coverage purposes.

The Deputy and Supervisor perform primarily management, administrative and supervisory duties, but occasionally perform some inspection and investigative work. Training is provided by the Deputy, the Supervisor, and the experienced specialists, both in the field and in the office. The Agricultural Commissioner will begin a rotation among some of the Supervisors for cross-training purposes. George will rotate out of PUE for approximately six months beginning October 1, 2007, and then will return to the program in March 2008. For Fiscal Year (FY) 06/07, total estimated licensed man-hours available were 11,000 hours and support hours were estimated at 2,200 hours. Actual hours expended were 10,904 licensed man-hours and 2286 support hours during FY 06/07.

RESTRICTED MATERIALS PERMITS (RMPs) **& OPERATOR IDENTIFICATION NUMBERS (OP IDS)**

PERMIT EVALUATION PROCESS

In FY 06/07, San Bernardino County had 270 agricultural pest control businesses (PCBs), 79 pest control advisers (PCAs), 8 farm labor contractors (FLCs) and 586 structural pest control companies (SPCOs) registered. New legislation (and new registration fees) going into effect on January 1, 2008 will require structural Branch 1 (fumigation) companies and their licensed operators and field representatives to register. A company licensed in Branch 2 and/or 3 will also be required to register separately from the Branch 1 company. For San Bernardino County, the new fees require approval by the Board of Supervisors, but since the approval process will not occur until mid-year 2008, the new fees will not be charged until after the start of FY 08/09. Affected companies will be notified through our annual newsletter.

In FY 05/06, there were 341 restricted material permits (RMPs) issued, comprised of 303 agricultural and 38 non-agricultural permits; 174 Operator Identification Numbers (OP IDs) were also issued. During the same year, twelve agricultural and two non-agricultural permits were denied. About 50% of the RMPs were issued to pest control businesses with either an agricultural or maintenance gardener license. In FY 06/07, the numbers were 334 agricultural and 32 non-agricultural permits, with 119 OP IDs. Permits denied were four agricultural and three non-agricultural. Both RMPs and OP IDs are issued in all four of the county's offices in San Bernardino, Ontario, Barstow and Victorville. San Bernardino and Ontario offices have capability to print RMPs and OP IDs using the new Restricted Materials Management System (RMMS) program.

The number of RMPs issued for the use of methyl bromide, metam sodium and chloropicrin in field fumigation is around 10-15; all corresponding DPR policies and regulations regarding permit conditions are followed during the issuance process. DPR has provided training to our staff on RMP issuance early in our permit issuance season, which begins around December 1st.

PCB RMPs are issued only to qualified applicators with proper categories who are employed by these pest control businesses, which in turn are currently registered with our department. The specialist in the district makes any changes to the documents at the time of actual issuance to the permit holder based on needs and conditions. Pesticides, commodities, acreage, methods of treatment, Notice of Intent (NOI) requirements, and permit conditions are all carefully discussed with the permittee at the time of permit issuance to ensure completeness, accuracy, and an understanding of the requirements. Our goal is to place even more emphasis during the next permit issuance year in ensuring that permit information is up-to-date and accurate; one historical problem has been that restricted materials are sometimes carried over on the pre-printed RMP from the preceding year when they no longer will be used.

This goal will be accomplished by in-house staff training and reviewing DPR permit policies with staff; this should result in even fewer errors on RMPs. Methyl bromide, chloropicrin, and metam sodium will be purged from the pesticide database at the time the RMPs are pre-printed; any permit applicant must specifically request these pesticides to be added to their permit.

Finally, a thorough review of each RMP and OP ID that is issued will be conducted by the Supervisor as a final check. The RMP issuance process could be modified based upon the upcoming training that will be received from DPR.

Our county requires any grower involved in production agriculture with employees working as handlers or field workers to be certified as a private applicator to meet training qualifications, unless the employer hires a qualified trainer to perform the training. During FY 05/06, approximately 75 private applicators were certified through examination and only one through continuing education. Seventeen persons failed the written private applicator examination. During FY 06/07, 54 private applicators were certified (five through continuing education) and sixteen failed the written examination. In order for a RMP to be issued to a grower, that grower must be certified; otherwise, the grower must authorize a certified person to sign the permit or pass the PAC examination.

All registrations are processed only in the main office, located in San Bernardino, so that the monies can be collected and receipts can be issued electronically. District offices do not register businesses but they do issue RMPs and OP IDs to those applicants based within the particular district. Currently, the RMPs and OP IDs already entered in the database are pre-printed electronically at the main office and then sent to the appropriate district office. Our goal is for RMPs and OP IDs to be printed in the district offices in the future after the RMMS system has been installed. This system will enhance our capabilities and streamline the permitting process.

SITE MONITORING

Site maps are reviewed and updated, if necessary. If the site is not new, the specialist reviews the map with the permittee to see if any changes have occurred. If other than minor changes have occurred or if the specialist is unfamiliar with the site, the specialist will visit the site to determine if any potential adverse effects may occur as a result of the application. If the site is new, site evaluation is done in the field by the specialist. Permit conditions are also reviewed and modified according to any changes at the site(s), such as a change in the acreage, crops, etc.

San Bernardino County requires a Notice of Intent to be submitted at least 24 hours prior to all aerial applications of both restricted and non-restricted pesticides. This is a permit condition we document for every agricultural pest control business that performs aerial applications, and these PCBs have always fully cooperated. This makes us aware of every aerial application in the county, which increases our effectiveness of monitoring such applications, and enables us to respond quickly and effectively to questions and concerns from the public.

San Bernardino County received about 1,550 Notices of Intent during FY 05/06 and 1,150 during FY 06/07. Our goal is to review close to 100% of these to ensure that permits are current and correct, sites are familiar and mapped, and any potential hazards are mitigated. Reviews are done both in the field and at the office. Time spent by staff conducting these reviews amounted to 368 hours during FY 05/06, and 267 hours during FY 06/07. We completed 151 Pre-Application (Pre-App) Site Inspections during FY 05/06, which is about 9.7% of the NOIs received; we completed 187 Pre-App Site Inspections during FY 06/07 (about 16% of the NOIs). DPR requires counties to perform Pre-App Site Inspections at a minimum rate of 5% of the NOIs received. As an internal county Performance Measure Goal (requested by the San Bernardino

County Administrative Office), our department committed to inspecting 7.5% of all Notices of Intent for agricultural applications during FY 06/07; we also had this as a work plan goal. We completed 157 application inspections out of 1,150 NOIs, which is 13.7%. For FY 07/08, our goal (both internal and work plan) will be to perform application inspections on 10% of all the agricultural NOIs we receive.

In addition, agricultural applications of fumigants (aluminum phosphide, methyl bromide, metam sodium and chloropicrin) are given a very high inspection priority, with a goal of 90-100% monitoring by the department, even if the application takes place on the weekend. Our goal is to attempt to prevent any exposure and/or drift episodes from occurring. Since implementing this procedure several years ago, no episodes involving aluminum phosphide, methyl bromide or metam sodium have occurred. In September 2006, we had two separate Priority incidents involving strawberry fields (same grower) fumigated with 100% chloropicrin. No RMPs for shank-applied chloropicrin were issued during the 2007 fumigation season due to these incidents. DPR sponsored training on the proposed regulations for fumigant Volatile Organic Compounds (VOC) reductions will be given to our staff the last week of November 2007. These regulations should have minimal effect in San Bernardino County because only the desert areas of the county would be impacted. The fields fumigated for pre-plant strawberries are located in the Chino/Ontario area, which is outside the nonattainment area. No soil fumigations have occurred in our desert area for about 10 years.

Schools are considered very sensitive sites, so applications at or near schools are always given high priority. Methyl bromide soil fumigations near schools are only allowed when students are not present, as on the weekends; permit conditions (such as buffer zones) are strictly enforced. Several years ago we contacted every school district in the county to ensure awareness of pesticide use requirements. Surveillance around these sites has increased as our department has received a few complaints and inquires from interest groups and concerned parents of students regarding pesticide use at schools and notification issues resulting from passage of the Healthy Schools Act. This department will continue our goal to give high importance to the monitoring of pesticide applications made at or near schools. We have not had any pesticide-related incidents at our schools involving children since adopting these procedures. Due to a request from the San Bernardino County Superintendent of Schools regarding potential agricultural use pesticide effects next to a proposed school, we are looking into the possible implementation of a notice of intent requirement in 2008 for any agricultural production pesticide classified as Category 1 or 2 proposed adjacent to a school. Rodenticides placed below ground would be exempt from the proposed regulation.

COMPLIANCE MONITORING

INVESTIGATIONS

In a typical year, the department receives 20-35 complaints. About 25% involve property loss, another 25% involve environmental effects, and the remainder covers the gamut from licensing to odor and efficacy issues. Slightly less than half of the complaints investigated resulted in

violations being found. During FY 06/07, human effects investigations totaled 35; included in the total were nine involving structural pesticides and four involving agricultural pesticides. The largest category of human effect investigations involved antimicrobials. Historically, San Bernardino County investigates 1-3 priorities in a given year, but had none during FY 05/06. There were a total of four during FY 06/07.

The Supervisor and the Deputy review each investigation independently for completeness and accuracy, and to ensure that appropriate enforcement/compliance action is taken. We maintain one log for tracking complaint investigations and another for tracking human effects investigations generated from Doctor's First Reports forwarded by DPR Worker Health & Safety (WH&S). All of our investigations have been completed within the allotted DPR timeframes. One of our goals each year is to complete each non-priority investigation within two months of receipt. The two newest PUE specialists are being trained by more experienced staff to conduct investigations and the bilingual officers' ability to speak Spanish has already been utilized during several investigations. All staff, except the two newest specialists, attended DPR ENF/WH&S 05/06 training on the revised Pesticide Episode Investigation Manual in February 2006.

Education of industry and the public is another of our goals when conducting investigations. We attempt to ensure that the regulated person/business/agency understands applicable pesticide-related requirements and stress that we are a proactive information resource. We stress label requirements to homeowners, and distribute DPR compliance information to them, when appropriate. With investigations involving employer/employees, some of the information that may be distributed is: Pesticide Safety Information Series (PSIS) leaflets, copies of worker safety regulations, sample training program and training record and application record, and compliance pamphlets. We have performed a few antimicrobial investigations at a large hospital where we had previous investigations, but due to contact with our department in the earlier investigations, this hospital has developed an excellent pesticide safety training program and an excellent illness reporting system, often notifying our department immediately after occurrence of an incident, long before we receive a Doctor's First Report.

In October 2006, we began receiving notifications by e-mail of some pesticide-related illnesses from the California Poison Control System. We have observed that this new notification process has greatly improved our ability to perform illness investigations in a timelier manner. Some of the doctors' reports do not list any symptoms, so we delay the start of the investigation for a few days, to see if we will receive notification from DPR Worker Health & Safety that an investigation is unnecessary. A lot of these reports involve small children being exposed to household rodenticides and aerosol-type insecticides.

INSPECTIONS

The PUE division is now fully staffed and the newer specialists (hired in November 2004, May 2005, and August 2006) are now licensed and independent and performing inspections on their own the majority of the time. The total numbers of inspections was anticipated to be higher during FY 05/06 than during FY 04/05 and the numbers bore this out; FY 05/06 total inspections were up about 22%. The increase in inspections performed for FY 06/07 was about 7% above the previous year.

This department has always fully cooperated with DPR in the area of oversight inspections and we look forward to and welcome DPR's involvement in the future. DPR is another resource the counties can utilize to improve our inspection quality and techniques. Staff attended the DPR/Structural Pest Control Board (SPCB)-sponsored structural pest control enforcement training that was held in spring 2007.

We also received an introduction to the AIRS (Automated Inspection and Reporting System) hardware and software. This would enable staff to perform inspections in the field on computer tablets. Some of the benefits would include increased inspection accuracy, completeness, and legibility, along with inspection history and pesticide and regulation databases. As of fall 2006, this department was evaluating AIRS and considering purchase of additional tablets and implementation of this tool. As of fall 2007, we have purchased three additional tablets and the corresponding printers, but have not yet begun to use them for inspections. The specialists are becoming familiar with the program and practicing on their tablets.

Appointments generally are not made to perform application inspections because it is important to observe the handler working in his normal routine, without prior knowledge that someone will be observing. The application inspection forms are reviewed by the Supervisor to ensure completeness and that the business is not performing pest control out of category. Headquarter inspections are usually scheduled because it is often difficult to find the responsible person at the office.

Landscape maintenance companies performing pest control without possessing an agricultural pest control business license continue to be a problem. These companies have a financial advantage (money saved on licensing, registration and insurance) over licensed companies and from our experience, have a much higher rate of worker safety violations. Our policy is to inspect every application involving an unmarked vehicle or business name not familiar to us. If a pesticide application is not taking place at time of observation, then contact is still made with the business for the purpose of explaining regulations and the requirements for licensing and registration. We maintain a list of unlicensed businesses/individuals that we have contacted over the years.

Through our own previous focused activity involving the structural fumigation certification phase and another county's focused activity on the aeration phase, our department has realized that significant safety shortcuts are being taken by Branch 1 structural fumigation licensees and companies. These shortcuts potentially impact the safety of the public and of the company employees. For these reasons, an enforcement presence will continue to be maintained at a high level in these two problem areas of structural fumigation. A second internal county Performance Measure Goal (and a work plan goal) we set for FY 05/06 was to perform inspections on at least 3% of all the structural fumigation Notices of Intent we receive; 184 inspections, or 3.6% of the 5,100 structural NOIs were performed. Our goal for FY 06/07 was also set at 3%. We accomplished 5.1% (199 inspections performed on 3,917 structural NOIs). Our goal for FY 07/08 will be 4%. The number of structural NOIs could be less than the previous year if the housing market continues to struggle (compare 05/06 total of 5,100 NOIs to 06/07 total of 3,917).

New respirator regulations also go into effect on January 1, 2008. Some of the new requirements include a voluntary respirator provision, new medical evaluation and questionnaire sections, and

program evaluation and recordkeeping. Affected companies and growers will be notified of these requirements through the annual newsletter.

THE FOLLOWING STATISTICS ARE FROM: FY 2006/2007:

On the agricultural side, 106 of the 322 application inspections performed were on property operators with the remainder on pest control businesses. The non-compliance rate was much higher during monitoring of pest control businesses; this was skewed because of the many unlicensed pest control (landscape maintenance) businesses observed applying pesticides. The majority of the non-compliances were related to worker safety, with failure to wear eye and hand protection and failure to post emergency medical care amounting to about 35-40% of the total non-compliances. Most of the non-compliances for failure to wear eye and hand protection were documented during mix/loads and applications made from hand sprayers.

Commodity Fumigation Inspections (67) and Pre-App Site Inspections resulted in three non-compliances. Commodity fumigations of grain mills with methyl bromide are almost always performed on Saturdays by the licensed pest control business; every fumigation is monitored by staff. Five non-compliances were documented during 35 Field Worker Safety Inspections. Forty-four non-compliances were noted during the 125 Headquarter/Employee Safety Inspections performed and zero non-compliance was documented during the 44 Agricultural Business Records Inspections performed. These numbers indicate a good level of compliance in these areas of inspection.

Structural Fumigation Inspections totaled 199. There were 28 non-compliances documented during these non-focused activity inspections. Less than one-third of the inspections were performed during the fumigant introduction phase, an area where the industry has historically followed regulations.

Branch 2 and 3 Structural Pest Control Inspections totaled 211, of which about 90% were Branch 2. The majority of the 65 non-compliances noted during these inspections involved employee failure to wear personal protective equipment that was available at the use site.

Structural Business Records Inspections were performed on 52 companies, and only one non-compliance was documented, while 39 Structural Headquarter/Employee Safety Inspections resulted in one non-compliance. The number of Branch 2 and 3 inspections was down slightly from the year before due to the newer specialists inspecting at a high frequency during 2005/2006 in order to gain experience.

Pest Control Business Application inspections performed exceeded our original goal of 150, due in large part to numerous unlicensed maintenance gardener businesses still being encountered.

	06/07 Goals	06/07 completed	07/08 Goals
Property Operator applications (agriculture)	80	106	100
Property Operator mix/loads (agriculture)	20	20	20

Pest Control Business applications (agriculture)	150	216	170
Pest Control Business mix/loads (agriculture)	20	25	20
Structural Branch 1 fumigations	150	199	175 (4%)
Structural Branch 2 applications	150	194	175
Structural Branch 3 applications	10	17	12
Field Worker Safety	30	35	30
Commodity Fumigations	25	67	40
Field Fumigation	7	13	5
Grower Employee Safety	25	38	30
Property Operator Non-Production Employee Safety	35	51	40
Agricultural Pest Control Business Employee Safety	35	36	35
Structural Pest Control Business Employee Safety	35	39	35
Agricultural Pest Control Business Records	38	44	38
Dealer Records	5	6	5
Pest Control Adviser Records	5	6	5
Structural Pest Control Business Records	40	52	40

ENFORCEMENT RESPONSE

When deciding whether a civil penalty should be proposed, we follow the Enforcement Response Regulations. The vast majority of actions are proposed within a two-month period following documentation of the violations, with a significant number being proposed within a few weeks. The decision to take enforcement action and the details (code sections and penalty amounts) of the action are made primarily by the Deputy, with final approval given by the Commissioner before each Notice of Proposed Action (NOPA) is sent out. The Deputy sometimes makes the decision independently of input from others within the PUE unit, but at other times solicits advice and/or recommendations from the Supervisor and the PUE specialists at Civil Penalty Committee (CPC) meetings. Consistency is always strived for when NOPAs are being drawn up and DPR enforcement guidelines are followed. Compliance is the overall goal, so all enforcement options are considered.

First contact of an unlicensed agricultural pest control business is handled as discussed earlier in the Inspections section. When we discover agricultural pest control businesses performing work outside their license categories, a Cease and Desist Order is issued to those businesses. Additional information can be obtained during the CPC meetings from the specialist concerning their inspections; this helps in reaching enforcement decisions. The meetings also serve as training for the specialists and a basis for uniformity among the specialists in performing inspections and in interpreting guidelines and procedures.

As of the first three months of FY 07/08, 43 civil penalties had already been proposed, so it appears once again that more than 100 civil penalties will be proposed for the fiscal year. For the entire FY 06/07, 126 (27 structural and 99 agricultural) civil penalties were proposed and only one hearing was held, compared to FY 05/06 when 94 total actions were proposed (up from 58 total actions during FY 04/05) and two hearings were held. The Hearing Officer for PUE actions alternates between the department's Chief Deputy and the Exclusion/Detection Deputy.

The Advocate has traditionally been the PUE Deputy or the Supervisor, but our goal is to have specialists act as advocates in some of the hearings in the future.

Many unlicensed businesses and individuals have received warning letters from us as a result of our pesticide dealer audits. Our policy for proposing civil penalties against unlicensed landscape maintenance companies that we inspect in the field is this: all companies will receive a fine for violation of Food and Agricultural Code (FAC) Section 11701, unless the landscape contractor (C-27) exemption applies or the company has no employees and is strictly operating in a residential landscape setting. The fine is placed in Class B at the minimum amount. Worker safety violations are usually not fined unless the company has been previously contacted by our department or the violations were significant and there was a high potential for health effects occurring.

It is anticipated that the passage of Title 3, California Code of Regulations section 6128 (Enforcement Response) will increase the number of civil penalties and the amount of the fines proposed. The number of hearings requested could also increase. The 2005 implementation of the Enforcement Response Plan has created some additional workload in the area of Decision Reports, which must be written if an action may be considered "optional." The Deputy has historically written all the Decision Reports as a matter of consistency, and also being the staff member with the most experience. There are no immediate plans for the Supervisor or the specialists to write Decision Reports. The fine levels for structural civil penalties were increased in late September 2006, so they are now equal to the levels for agricultural civil penalties. Our goal is to implement higher structural civil penalties when appropriate. The DPR Enforcement Branch Liaison (EBL) will be notified immediately when any respondent has requested a hearing. The EBL will also be notified at the time our department refers any cases to other agencies for enforcement action, such as licensing action or prosecution.

Collection of the fines has been a minor problem, with fines from unlicensed pest control (landscape maintenance) businesses being the most difficult to collect. These problem accounts have been turned over to County Collection, with limited success.

BY: Jim Mitchell
Deputy Agricultural Commissioner

DATED: October 24, 2007